

THE
NATIONAL LAW REVIEW

EPA Finalizes National Compliance Initiatives for FY2020-FY2023

Friday, June 21, 2019

On June 7, 2019, the U.S. EPA Office of Enforcement and Compliance Assurance (OECA) finalized its [National Compliance Initiatives \(NCIs\) for FY2020-FY2023](#). The NCIs represent EPA's enforcement and compliance priorities.

The final list of NCIs consists of the following:

1. Creating cleaner air for communities by reducing excess emissions of harmful pollutants from stationary sources.
2. Reducing hazardous air emissions from hazardous waste facilities.
3. Stopping aftermarket defeat devices for vehicles and engines.
4. Reducing significant noncompliance with National Pollutant Discharge Elimination System (NPDES) permits.
5. Reducing noncompliance with drinking water standards at community water systems.
6. Reducing risks of accidental releases at industrial and chemical facilities.

In general, the NCIs reflect EPA's increased focus on compliance assurance rather than enforcement alone. This is consistent with EPA's 2018 renaming of the National Enforcement Initiatives using the new NCI terminology. In selecting these new NCIs, EPA stated that it focused on increasing collaboration with states and tribes and encouraging the use of EPA's "full range of compliance assurance tools," including compliance assistance, self-audits, and informal and formal enforcement actions.

Notwithstanding EPA's focus on compliance assurance, businesses should evaluate their operations in light of EPA's initiatives because any alleged non-compliance still has the potential to result in enforcement actions.

Changes from FY2017-FY2019 NCIs

The new NCIs contain a number of notable changes from the FY2017-FY2019 NCIs.

"Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources"

EPA has significantly modified two previous NCIs - "Cutting Hazardous Air Pollutants" and "Ensuring Energy Extraction Activities Comply with Environmental Laws" - and combined them into a new NCI focused on reducing emissions of both volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). For VOC emissions, the NCI will focus on significant sources of VOCs that have a substantial impact on air quality and that may adversely affect:

1. NAAQS attainment.



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2. Vulnerable populations.

For HAPs, the NCI will focus on sources that have a significant impact on air quality and health in communities. Unlike its predecessors, this NCI does not focus on a particular industrial sector.

“Reducing Air Pollution from the Largest Sources”

EPA is returning its longstanding New Source Review (NSR) enforcement initiative to its “core program.” For well over a decade, EPA has used this enforcement initiative to pursue a wide variety of industries, such as electric utilities, refineries, and cement plants, claiming routine industry-wide violations of NSR permitting requirements. EPA now appears to believe that this initiative has run its course, citing:

1. Greater than 80% reductions since 1997 in sulfur dioxide and nitrogen oxide emissions from the power sector.
2. Installation of controls and/or commencement of investigations at $\geq 90\%$ of facilities in the glass, cement, and acid manufacturing sectors.

Accordingly, [EPA found](#) that this NCI “no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide.”

“Stopping Aftermarket Defeat Devices for Vehicles and Engines”

This new NCI will focus on stopping the manufacture, sale, and installation of defeat devices on vehicles and engines used on public roads as well as on non-road vehicles and engines. The elevation of this new initiative reflects the significant increase in EPA enforcement efforts in this area over the past several years. OECA reports that it has already resolved more than 30 such cases, which together involved more than one million illegal aftermarket parts.

“Reducing Significant Noncompliance with National Pollutant Discharge Elimination System Permits”

This new NCI replaces the NCI titled “Keeping Industrial Pollutants Out of the Nation’s Waters.” The new NCI focuses on all NPDES permittees, rather than just industrial contributors, and seeks to reduce significant NPDES noncompliance by 50% by the end of FY2022.

Outlook

This summer, OECA has stated that it will develop “implementation frameworks” for each NCI in collaboration with states and tribes, according to OECA’s [FY 2020-FY2021 National Program Guidance](#). These implementation frameworks will focus on compliance assurance. However, OECA cautions that “formal enforcement will remain an important tool in the NCIs to address serious noncompliance and create general deterrence.”

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